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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,378	02/25/2002	David A. Niday	DBZ-221P2	4571
26875	7590	10/10/2003		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER GREEN, CHRISTY MARIE	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/082,378

Applicant(s)

NIDAY ET AL.

Examiner

Christy M Green

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-18 and 20-34 is/are rejected.
- 7) ☒ Claim(s) 4 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is a first office action for serial number 10/226024, entitled Metal Panel Roofing Method and Assembly, filed on October 22, 2002.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the material" in line 2. There is insufficient antecedent basis for this limitation in the claim. Since this limitation was not previously stated within the claim, it therefore lacks antecedent basis.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: within claim 2, a laterally extending portion and perimeter portion are unclear, is it the flange portion, or the reinforcing plate – and is the perimeter portion the peripheral edge or another part of the invention? The examiner will interpret as best understood, and clarification should be made within the specification as well as within the drawings in regards to this claim limitation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8-10, 13-18, 20-21, 23, 24, 26, 27, 30, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Neyer, US patent # 4,000,539.

Neyer discloses the claimed invention protective cover (10) comprising a collar structure (22) defining a perimeter portion (figures 1 and 2), an open end (26) for receiving the end of a rebar (12), a cap portion (20) oriented substantially perpendicularly to the collar structure (figure 2), the cap comprising a barrier plate (16) defining an exposed upper surface (56) of the cover; the cap comprises a laterally extending portion (70, 60) radially outward from the perimeter portion and located beneath the barrier plate (figures 2 and 5); the barrier plate includes apertures (62) and the material of the cap portion (20) extends through the apertures; the barrier plate comprises an impact resistant material (column 1, lines 8-12 and lines 26-28) capable of resisting penetration by the end of the rebar located in the collar structure; the barrier plate comprises a metal plate (column 1, lines 9-11), Kevlar (interpreted to be plastic - column 1, lines 26-28); the barrier plate defines an exposed lower surface (where 56 points to – figure 5), within an area defined by the perimeter portion (where 58 points to); the barrier plate is curved (figures 1 and 3); the barrier plate (16) defines an outer edge (58) and the cap portion (20) extends around the outer edge (by 62) and defines a

flange portion (60) extending onto the exposed upper surface (58) adjacent to the outer edge; the collar structure (22) comprises a pair of concentric collar members (26, 30); an inner collar member (30) and an outer collar member (where 14 points to) spaced from the inner collar member by a plurality of ribs (42); and, a reinforcing plate (48) disposed adjacent a lower surface of the barrier plate (16).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neyer.

Neyer discloses the claimed invention as stated above in claim 1, except for the barrier plate is steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the barrier plate to be made of steel, since the applicant has not disclosed that this material is of a particular purpose and it seems that the invention performs equally well with the metal as disclosed in the reference cited, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Also, it is common knowledge to those of ordinary skill to choose materials that has sufficient strength for the intended use of that material.

Claims 11, 12, 28, 29, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neyer, US patent # 3,495,363 in view of Baxter, US patent # 4,824,136.

Neyer discloses the claimed as stated above in claim 1, except for the barrier plate is quadrilateral, and it has a double curvature. Baxter teaches that it is known in the art to provide a quadrilateral barrier plate (13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a quadrilateral plate as taught by Baxter with the protective device of Neyer in order to provide a generally symmetrical member (column 1, line 35) that is durable and economical to construct (column 1, lines 22-23). In regards to the double curvature, it would have been obvious to provide a double curvature, since Neyer discloses that his barrier plate is curved in all directions and since applicant has not disclosed that a double curvature plate solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a plate that curves in all directions.

***Allowable Subject Matter***

Claims 4 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: within claims 4 and 19, prior art does not disclose connector portions

terminating in enlarged head portions located on the exposed upper surface in combination with the limitations within their preceding independent claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

*Yvonne M. Horan*  
*YMH*

cg  
August 25, 2003